

U.S. Patent Application Serial No. 10/537,376
Amendment filed September 2, 2009
Reply to OA dated June 2, 2009

REMARKS

By the present amendment, the subject specification has been amended in order to correct apparent clerical errors and to more particularly point out the subject matter to which the applicants regard as their invention. The applicants respectfully submit that no new matter has been added.

In particular, the following changes were made to pages five and forty-nine:

(a) Page 5, line 1, "30 to 250°C" to --250 to 500°C--. This is a correction of an apparent clerical error as is evident from the definition of the heat loss (T_g) on page 7, lines 7-12, in particular line 10 of the present specification.

(b) Page 49, line 1, "450 nm" to --400 nm --. This was also a correction of an apparent clerical error as evident from a consideration of apparent from Table 6 on page 50 of the present specification.

Entry of these amendments is respectfully requested.

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In the Action, claim 11 was objected to under 37 CFR 1.75 as being a substantial duplicate of claim 3. From a careful review, it would appear that this assertion is incorrect in this regard as claim 3 is dependent from claim 2 (which is dependent upon claim 1) whereas claim 11 (reciting the same subject matter as claim 3) is directly dependent upon claim 1.

It was asserted "applicant is advised that should claim 3 be found allowable, claim 11 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof." Inasmuch as claim 3 is dependent from claim 2, which is dependent upon claim 1 and, thus, claim 3 is required to satisfy (a) to (d) defined by claim 1, (e) and (f) defined by claim 2, and (g) and (h) defined by claim 3. On the other hand, claim 11 is directly dependent from claim 1 and, thus, claim 11 is required to only satisfy (a) to (d) defined by claim 1 and (g) and (h) defined by claim 11.

Therefore, the subject matter of claim 3 and claim 11 differs from each other. Accordingly, withdrawal of the objection is respectfully requested.

Further, claims 1-4, and 11-13 were rejected under 35 U.S.C. 103(a) as being unpatentable over the patent to Takiyama et al (U.S. 6,663,948). In making this rejection, it was asserted that the patent allegedly teaches the entire process of making calcium phosphate base particulate compound as set forth in the noted claims 1, 3 and 11 and renders the remainder of the claims obvious to one of ordinary skill in

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the art. Reconsideration of this rejection in view of the following comments is respectfully requested.

In response to this rejection, it is to be noted that the patent to Takiyama et al is assigned to the same assignee as the subject application and that both applications were co-pending, particularly since applicants herein are awarded benefit of the filing date of the PCT application of December 4, 2003. The provisions of 35 USC § 103(c) state that prior art effective under the language of 35 USC § 102(e), that is, a U.S. patent having a issue date subsequent to the filing date of the subject application, or published U.S. patent application having an earlier filing date, is not effective prior art if the two have the same assignee. Since the Takiyama et al patent and the subject application are assigned to the same assignee and the basis for citation of the Takiyama et al patent is 35 USC § 102(e), the above provisions of § 103(c) would apply. Thus, the cited Takiyama et al patent is not an effective reference and the rejection is without merit.

In summary, the cited U.S. Patent and the present application are assigned to the same assignee, Maruo Calcium Company Limited and, thus, do not preclude patentability of the present application under 35 U.S.C. §103 (c).

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For the reasons stated above, withdrawal of the rejection under 35 U.S.C. § 103(a) and allowance of claims 1-4 and 11-13 over the cited patent are respectfully requested.

In view of the aforementioned amendments and accompanying remarks, it is submitted that claims 1-4 and 11-13 are in condition for allowance.

The applicants respectfully submit that the amendments to the specification obviates the objection to the specification. Accordingly, withdrawal of the objection to the specification is respectfully solicited.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

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In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,

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